Notification No. 77—Legis. 23-03, dated Bangalore the 21st December 1903.

The following draft of a Regulation to consolidate and amend the law relating to Lunacy and Lunatics' Estates in Mysore,—which is under the consideration of Government,—is published for general information, together with a Statement of Objects and Reasons.

By Order,
K. S. CHANDRASEKHARA AIYAR,
for *Secretary to Government.*

REGULATION No. OF 190 .

(DRAFT.)

A Regulation to consolidate and amend the law relating to Lunacy and Lunatics' estates in Mysore.

Preamble.

Whereas it is expedient to consolidate and amend the law relating to Lunacy and Lunatics' estates in Mysore: His Highness the Maharaja is pleased to enact as follows :—

CHAPTER I.—PRELIMINARY.

Short title, extent and commencement.

1. (1) This Regulation may be called the "Mysore Lunacy Regulation, 190 ."

(2) It extends to the whole of Mysore; and

(3) It shall come into force on the first day of 190 .

Repeal.

2. So much of the "Rules relative to the custody and guardianship of minors, idiots and other disqualified persons in the Province of Mysore," published with the Notification of the Government of India, Foreign Department, No. 75 J., dated the 25th April 1872, as has not been repealed by the Guardians and Wards Regulation, 190 . is hereby repealed.

Definitions.

3. In this Regulation, unless there is something repugnant in the subject or context,—

"Lunatic."

(1) "Lunatic" means a person found by due course of law to be of unsound mind and incapable of managing his affairs.

"District Court."

(2) "District Court" means the principal Civil Court of original jurisdiction in a District.

CHAPTER II.—ENQUIRY INTO LUNACY.

District Court on application may institute enquiry when a person possessed of property is alleged to be a lunatic.

4. Whenever any person who is possessed of property is alleged to be a lunatic, the District Court within those jurisdiction such person is residing may, upon such application as is hereinafter mentioned, institute an enquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

Application by whom to be made.

5. Application for such enquiry may be made by any relative of the alleged lunatic, or by the Government Advocate or a Public Prosecutor, or if the property of the alleged lunatic consist in whole or in part of land or any interest in land, by the Deputy Commissioner of the District in which it is situate.

Notice of enquiry to be given to lunatic.

6. (1) When a District Court is about to institute any such enquiry as aforesaid, it shall cause notice to be given to the alleged lunatic of the time and place at which it is proposed to hold the enquiry.

Service of notice.

(2) If it shall appear that the alleged lunatic is in such a state that personal notice on him would be ineffectual, the District Court may direct such substituted service of the notice as it shall think proper.

(3) The District Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic.

Powers to require attendance or examination of lunatic.

7. (1) The District Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic. The District Court may likewise make an order authorising any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

(2) The attendance and examination of the alleged lunatic under the provisions of sub-section (1) shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

Appointment of assessors.

8. The District Court, if it thinks fit, may appoint two or more persons to act as assessors to the Court in the said enquiry.

Order of Court.

9. Upon the completion of the enquiry, the District Court shall determine whether the alleged lunatic is or is not of unsound mind, and may make such order as to the payment of the costs of the enquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if he be adjudged to be of unsound mind, or otherwise, as it may think proper.

Issue of commission to a subordinate Court.

10. (1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court to which the application shall have been made is held, the said Court may issue a commission to any Court subordinate to it, to make the enquiry, and thereupon the said subordinate Court shall conduct the enquiry in the manner hereinbefore provided.

Report of subordinate Court. Order of District Court.

(2) On the completion of the enquiry the subordinate Court shall report its proceedings with the opinions of the assessors, if assessors have been appointed, and its own opinion on the case; and thereupon the District Court shall make such order in the case as it may think fit.

Management of lunatic's estate.

11. (1) When a person has been adjudged to be of unsound mind and incapable of managing his affairs, the District Court shall, except as otherwise hereinafter provided, appoint a manager of the estate.

Who may be appointed manager.

(2) Any near relative of the lunatic, or any other suitable person, may be appointed manager.

Appointment of guardian by District Court.

12. Whenever a manager of the estate of a lunatic is appointed by the District Court, the Court shall appoint a fit person to be guardian of the person of the lunatic. The manager may be appointed guardian.

Provided always that the legal heir of the lunatic shall not in any case be appointed guardian of his person.

Court may direct Deputy Commissioner to take charge of lunatic's estate if consisting of land.

13. (1) If the estate consist in whole or in part of land or any interest in land, the District Court, instead of appointing a manager, may direct the Deputy Commissioner to take charge of the estate, and thereupon the Deputy Commissioner shall appoint a manager of the property and a guardian of the person of the lunatic.

Proceedings of Deputy Commissioner subject to control of Revenue authorities.

(2) All the proceedings of the Deputy Commissioner in the charge of estates under this Regulation shall be subject to the control of the superior Revenue authorities.

Remuneration of managers and guardians.

14. If the person appointed to be manager of the estate of a lunatic, or the person appointed to be guardian of a lunatic's person, shall be unwilling to discharge the trust gratuitously, the District Court or the Deputy Commissioner, as the case may be, may fix such allowance or allowances to be paid out of the estate of the lunatic, as, under the circumstances of the case, may be thought suitable.

Duties of guardian.

15. (1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance.

Allowance for maintenance.

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the District Court or the Deputy Commissioner, as the case may be, for the maintenance of the lunatic and of his family.

Powers of manager.

16. Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic: and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic. But no such manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immoveable property for any period exceeding five years, without an order of the District Court previously obtained.

Managers to furnish inventory and annual accounts.

17. (1) Every person appointed by the District Court or by the Deputy Commissioner to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver to the District Court or to the Deputy Commissioner, as the case may be, an inventory of the landed property belonging to the lunatic and of all such sums of money, goods, and effects, as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such manager shall furnish to the District Court or

to the Deputy Commissioner annually, within three months of the close of the official year, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

Procedure where accuracy of inventory or accounts is impugned.

(2) If any relative of any lunatic, or any public officer, by petition to the District Court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and enquire summarily into the matter and make such order thereon as it shall think proper; or the Court, at its discretion, may refer any such petition to any Court subordinate to it or to the Deputy Commissioner if the manager was appointed by the Deputy Commissioner.

Manager to pay proceeds of estates into public Treasury.

18. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public Treasury on account of the estate, and may be invested from time to time in the public securities.

Relative may sue for an account.

19. It shall be lawful for any relative of a lunatic to sue for an account from any manager appointed under this Regulation, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate.

Removal of manager or guardian by District Court.

20. (1) The District Court, for any sufficient cause, may remove any manager appointed by the Court, and may appoint any fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all moneys received or disbursed by him.

(2) The District Court may also, for any sufficient cause, remove any guardian appointed by the Court.

Removal by Deputy Commissioner.

(3) In like manner the Deputy Commissioner, for any sufficient cause, may remove any manager or guardian appointed by the Deputy Commissioner; and the District Court, on the application of the Deputy Commissioner, shall compel any manager to deliver his accounts and the property in his hands.

Power to punish manager refusing to furnish accounts.

21. The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the Court, and may realise such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court, and may also commit the recusant to close custody until he shall deliver such accounts or property.

District Court may in certain cases apply property for lunatic's maintenance without appointing any manager.

22. If it appears to the District Court, having regard to the situation and condition in life of the lunatic and his family, and the amount and description of his property, to be unnecessary to appoint a manager of the estate as hereinbefore provided, the Court may, instead of appointing such manager, order that the property if money or if of any other description the produce thereof, when realised, be paid to such person as the Court may think fit to be applied for the maintenance of the lunatic or his family.

District Court may institute enquiry to ascertain whether a person has ceased to be of unsound mind,

23. (1) When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person or any other person acting on his behalf or having or claiming any interest in respect of his estate, shall represent by petition to the District Court, or if the District Court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the Court may institute an enquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs.

and may order estate to be restored.

(2) The enquiry shall be conducted in the manner provided in sections 6 to 10 of this Regulation; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the Court shall make an order for his estate to be delivered to him, and such order shall be final.

Orders to be open to appeal.

24. Except as otherwise herein provided, all orders made by a District Court or by any Court subordinate to a District Court under this Regulation shall be open to appeal under the rules in force for appeals in miscellaneous cases.

Power of Chief Court to make rules.

25. The Chief Court may from time to time by notification in the official Gazette make rules consistent with this Regulation for the guidance of the Courts in carrying out the provisions of this Regulation.

Amendment of section 463 of the Code of Civil Procedure.

26. In section 463 of the Code of Civil Procedure, for the words and figures "the rules relating to persons of unsound mind, published with the late Chief Commissioner's Notification No. 141, dated 31st July 1874," the words and figures "the Mysore Lunacy Regulation, 190 ," shall be substituted.

THE (DRAFT) MYSORE LUNACY REGULATION.

STATEMENT OF OBJECTS AND REASONS.

The law relating to Lunacy and Lunatics' estates in Mysore is contained in Rule 22 of the Rules published with the Notification of the Government of India, Foreign Department, No. 75—J., dated the 25th April 1872. This Rule provides in effect that, for the purpose of enquiring into and ascertaining the state of mind of persons alleged to be lunatics, the Courts shall follow the provisions of Act XXXV of 1858; but that matters relating to the custody of the persons of lunatics and the management of their estates shall be governed by the Rules of 1872 relating to Minors.

The Rules last mentioned are about to be replaced by a Regulation based on Act VIII of 1890, relating to Guardian and Ward; the Schedule to which will repeal the whole of the Rules of 1872 "except Rule 22 and so much of Rule 23 as relates to orders passed under Rule 22 and except so far as may be necessary to give effect to Rule 22."

It is now proposed to repeal the excepted provisions also, and to pass a distinct and self contained Regulation on the lines of Act XXXV of 1858, dealing both with the adjudgment of Lunacy and the management of Lunatics' Estates.

2. The only provisions of the Regulation which seem to call for explanation are section 2), and section 26.

Section 3 (2). It is considered inexpedient to empower Courts subordinate to a District Court to exercise lunacy jurisdiction, otherwise, of course, than by being commissioned to make an enquiry under section 10; and hence the example of the corresponding British Indian Act has been adhered to in restricting the term "District Court" to the principal Civil Court of Original jurisdiction in a District.

Section 26. The reference to Act XXXV of 1858 contained in section 463 of the Civil Procedure Code was erroneously altered by section 40 of Regulation II of 1884, to a reference to "the Rules relating to persons of unsound mind, published with the late Chief Commissioner's Notification No. 141, dated the 31st July 1874." These Rules, which correspond to the Indian Lunatic Asylums Act, 1858, are "Rules for the reception and detention of Lunatics in Asylums in the Province of Mysore," and do not provide for the adjudgment as lunatics of persons alleged to be of unsound mind. The erroneous reference is now proposed to be replaced by a reference to the present Regulation.

21—11—03.

K. S. C